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October 18, 2000

Delbert Rigsby, Esq.  
Attorney  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

RE: MUR 5080

Dear Mr. Rigsby:

The undersigned represent the respondents DNC Services Corporation/Democratic National Committee (the "DNC"), the 1996 Democratic National Convention Committee, Inc. ("1996 DNCC"), and Andrew Tobias, as Treasurer in the above mentioned Matter Under Review. Our clients received the Commission's letters of September 13, 2000, in which the Commission notified them that it has found reason to believe that the DNC and 1996 DNCC violated the Federal Election Campaign Act, as amended (the "Act"), 2 U.S.C. §§434(b) and 437(2) respectively. This complaint was internally generated by the Commission, apparently by reason of information obtained by the Commission in connection with its audit of the 1996 DNCC pursuant to 26 U.S.C. § 9008(g).

In this matter, the Commission alleges that the DNC and 1996 DNCC have violated the above-mentioned provisions of the Federal Election Campaign Act ("the Act") and regulations, because the DNC paid for three hotel rooms that may have been utilized by Scott Pastrick for Convention purposes. The Commission offers no factual support for its position other than the fact the Mr. Pastrick was the Treasurer of the 1996 DNCC.

## FACTUAL ANALYSIS

This matter originated with the Commission's audit of the 1996 DNCC. Although the 1996 DNCC's records did not contain any information regarding the use of the three hotel rooms, the auditors, based upon a newspaper article regarding the payment of the hotel rooms by the DNC requested information regarding the rooms. This request was noted in the Commission's Exit Conference Memorandum, p.15-16. The Commission's sole basis for this request was the fact that Mr. Pastrick was the Treasurer of the 1996

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COUNSEL

DNCC, as well as the fact that Mr. Pastrick made a five minute speech during the Convention proceedings in his capacity as Treasurer of the DNC.

In response to the Commission's request, the DNC determined that no portion of the three hotel rooms was used for Convention activity, and, accordingly, that it would be inappropriate for the 1996 DNCC to pay for any portion of the hotel rooms. In its response to the Commission's Exit Conference Memorandum the 1996 DNCC explained that:

As the Convention Committee has already informed the Audit Division, Mr. Pastrick's sole function at the Convention was to engage in fundraising for the DNC, and in activities related to such fundraising...Further, although Mr. Pastrick spoke briefly at the Convention, he did so solely in his capacity as DNC Treasurer, not in any capacity related to the Convention.....

It is fundamental to the Convention financing system that the costs of national party fundraising at the Convention should not be paid for with the public Contention grant...Thus, it is clear that no part of Mr. Pastrick's expenses should have been allocated to the DNCC.

1996 DNCC Response to the FEC's Exit Conference Memorandum, p.9

In its Report, the Audit Division noted its opinion that "the expenses associated with Mr. Pastrick's suite during the convention week, would seem, at least in part, allocable to the DNCC, as would the two additional rooms, given his position and responsibilities as the DNCC treasurer. Report of the Audit Division, p.21. However, the auditors provided no additional factual or legal basis for this assertion.

### LEGAL ANALYSIS

Neither the Audit Division Report, nor the Commission's Factual and Legal Analysis in this matter attempt to even hypothesize as to what activities conducted by Mr. Pastrick would be allocable to the 1996 DNCC. The Factual and Legal Analysis merely states that "it appears likely that Mr. Pastrick did perform some duties as treasurer of the Convention Committee during the convention week, which was the important time of the year for the Convention Committee." The Commission does not even attempt to discuss any hypothetical situation in which Mr. Pastrick conducted any convention activity on behalf of the DNCC. Indeed, a committee Treasurer is responsible for five major functions, none of which were performed by Mr. Pastrick during the Convention week:

- 1) The designation of an Assistant Treasurer. 11 C.F.R. § 102.7(a) – During the organization of the 1996 DNCC, Mr. Pastrick designated Bradley K. Marshall, the Chief Financial Officer of the 1996 DNCC, as its Assistant Treasurer. Mr. Marshall was responsible for the day-to-day financial operations of the DNCC and undertook that function in Chicago during the Convention.

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- 2) Authorization of Expenditures. 11 C.F.R. § 102.7(c) – Mr. Pastrick did not participate in the authorization of expenditures during the week of the Convention. Again, this function was delegated to Mr. Bradley K. Marshall.
- 3) Contributions forwarded to Treasurer and Deposit of Receipts. 11 C.F.R. § 103.3) – As a publicly funded convention committee, the 1996 DNCC was not permitted to raise contributions for its operations. Accordingly, Mr. Pastrick could not have engaged in the receipt of contributions on behalf of the 1996 DNCC during the Convention, nor did he handle any other receipts of the 1996 DNCC during the Convention week.
- 4) Recordkeeping Obligations. 11 C.F.R. §§ 102.9 and 104.14(b) – During the week of the Convention, Mr. Pastrick did not undertake to oversee any recordkeeping for the 1996 DNCC. Again, this function had been delegated to Mr. Marshall, 1996 DNCC Assistant Treasurer.
- 5) Reporting Obligations. 11 C.F.R. §§ 104.1(a) and 104.14(d) – The 1996 DNCC did not have any reports due during or immediately after the Chicago Convention. The last report due before the convention was filed on July 15, 1996, one month before the Convention. The first report filed after the convention was filed on October 15, 1996, two months after the convention.

Attached, is a Declaration executed by Scott Pastrick that confirms that he did not undertake any of the functions mentioned above, or any other function related to his position as Treasurer of the 1996 DNCC during the Convention week.

The DNC determined not to misuse taxpayer's funds by allocating the costs of these hotel rooms to the DNCC. Thus the DNC determined that to allow the 1996 DNCC to pay for DNC fundraising costs would result in a gross abuse of taxpayer funds. In that regard, we reiterate our response to the Exit Conference Memorandum:

The Audit Division's insistence that part of the expenses of a Party official to attend the Convention should be charged to the public grant, when the official admittedly had no other function at the Convention other than to support the national party committee fundraising, is truly ironic. It is an effort to penalize the DNC for doing the right thing. The Audit Division's position, were the Commission to uphold it, would be an open invitation for future abuse—an invitation to national party committees to slough off part of their fundraising costs on the taxpayers. This is exactly what the Commission should be discouraging, not encouraging. The Audit staff's hunt for further documentation, proof of Mr. Pastrick's activities during the convention, etc., is pointless and counterproductive.

1996 DNCC Response to the FEC's Exit Conference Memorandum, p.9

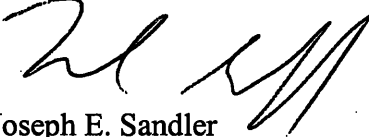
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To be sure, the 1996 DNCC returned more than enough funds to the United States Treasury to have paid for the entire cost of the hotel rooms itself. The DNC's decision not to provide documentation to the Auditors was based upon the limited amount of resources available to the 1996 DNCC during the audit, the overwhelming amount of factual and legal analysis required to respond to other issues raised during the audit, as well as the belief that the Audit Division's request for further information regarding the hotel rooms lacked any factual or legal merit.

### CONCLUSION

The facts in this case are clear. The 1996 DNCC had no motivation to shift the costs of these three hotel rooms to the DNC. To do so would have been an abuse of taxpayer funds and would have unjustly enriched the DNC's coffers. Mr. Pastrick's Declaration confirms that he did not undertake any role as Treasurer of the 1996 DNCC during the Convention, and that his activities in Chicago, with the exception of a five minute speech during the proceedings, consisted entirely of activities related to fundraising on behalf of the DNC. The DNC did not make, and the 1996 DNCC did not receive, an in-kind contribution in connection with the payment of the three hotel rooms. Accordingly, the Commission should find no probable cause to believe that the DNC or 1996 violated the Act or the Commission's regulations, and should close the file with respect to this matter.

Respectfully submitted,



Joseph E. Sandler  
Neil P. Reiff

21-04-402-4196

**STATEMENT OF DESIGNATION OF COUNSEL**

**MUR** 5080

**NAME OF COUNSEL:**

Sandler & Reiff, P.C.  
Joe Sandler & Neil Reiff

**ADDRESS:**

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Washington, DC 20003

**TELEPHONE:**

(202) 543-7680

The above-named individual is hereby designated as my  
counsel and is authorized to receive any notifications and other  
communications from the Commission and to act on my behalf before  
the Commission.

10/6/00  
Date

  
Signature

**RESPONDENT'S NAME:**

DNC Services Corporation  
1996 Democratic National Convention Committee  
Andrew Tobias as Treasurer

**ADDRESS:**

430 South Capitol Street, SE

Washington, DC 20003

**HOME PHONE:**

**BUSINESS PHONE:**

(202) 863-8000

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**BEFORE THE  
FEDERAL ELECTION COMMISSION**

<b>IN RE</b>	)	
<b>1996 Democratic National Convention Committee, Inc.</b>	)	
<b>and</b>	)	<b>MUR 5080</b>
<b>Democratic National Committee and</b>	)	
<b>Andrew Tobias as Treasurer</b>	)	

**DECLARATION OF R. SCOTT PASTRICK**

1. In 1996, I served as treasurer of DNC Services Corporation/Democratic National Committee ("DNC") and as treasurer of 1996 Democratic National Convention Committee, Inc. ("1996 DNCC").


2. I make this declaration in connection with the above-referenced MUR, to explain my role and activities at the 1996 Democratic National Convention in Chicago.

3. During the 1996 Democratic National Convention, other than making one short speech at the Convention, my activities on behalf of the DNC consisted entirely of helping to arrange, and attending, receptions and other events for donors to the DNC; soliciting contributions to the DNC; helping to arrange and attending fundraising events; and otherwise attending to the needs of donors and supporting the operation of the DNC Finance Division at the Convention.

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4. During the 1996 Democratic National Convention, I delegated all of my duties as treasurer of 1996 DNCC to 1996 DNCC Assistant Treasurer and Chief Financial Officer Bradley K. Marshall and, to the best of my recollection, I performed none of those duties myself during the Convention.

I declare under penalties of perjury that the foregoing is true and correct to the best of my present knowledge, information and belief. Dated this 18<sup>th</sup> day of October 2000.

  
R. Scott Pastrick

21-04-402-4199